IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10013 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

BAHADURSINH DADBHA KHACHAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/03/2000

ORAL JUDGEMENT

In this matter, notice was issued by this Court on 15th December, 1999 and in the mean time, interim stay of the impugned award was granted.

2. Today, when the matter was taken up for admission, learned advocates appearing for the respective parties have given consent for final disposal of this

matter today. Hence, rule. Mr. G.M.Joshi, the learned advocate appearing for the respondent has waived service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

3. The petitioner has, by this petition, challenged the impugned award passed by the labour Court, Bhavnagar in reference (LCB) No. 318 of 1994 dated 2.11.1998 whereby the petitioner was directed to reinstate the respondent workman in service with continuity of service and full back wages from the date on which his name was deleted from the wait list. The facts leading to the filing of the present petition, in short, are that the respondent was working with the petitioner corporation on daily wages. Inspite of directing him to report for duty, he has not reported for duty and, therefore, his name was deleted from the list which action was challenged by the respondent by filing the aforesaid reference before the labour court, Bhavnagar. The labour Court, after hearing the parties and also after appreciating the evidence on record, has passed the aforesaid impugned award of reinstatement of the respondent in service with continuity of service and full back wages. The labour court found that the provisions of section 25F of the Industrial Disputes Act,1947 have not been followed by the petitioner and before terminating the services of the respondent workman, the principles of natural justice have also not been followed and the respondent had remained absent because of the sickness and, therefore, the labour court has directed reinstatement of the respondent in service with full back wages.

4. Learned Advocate Mr. Raval appearing for the petitioner corporation has submitted that the labour court has erred in passing such an award because there is clear finding that the provisions of Section 25F of the ID Act have not been complied with. According to him, because of the monsoon season, there was no work available due to reduction of the schedules and, therefore, there was no illegal action on the part of the corporation.On the contrary, inspite of repeated reminders, the respondent workman has failed to report for duty and, therefore, the labour court ought not to have directed the corporation to reinstate the respondent in service. He has further submitted that the respondent was working as daily wage driver and, therefore, he was given the work as and when it was available and, therefore, the labour court ought not to have awarded reinstatement of the respondent with back wages.

5. On the other hand, Mr. Joshi, the learned advocate appearing for the respondent workman has fairly submitted that the respondent was working as a badli driver and was on wait list. According to him, however, since his services were terminated due to monsoon season without following any procedure and without giving him any notice, the action was illegal and due to his illness, he was not able to report for duty when called out and, therefore, the action of deletion of his name from the list was also illegal and, therefore, the respondent is entitled to reinsertion of his name in the list. He has further submitted that,therefore,the Court should not interfere with the direction of reinstatement. In so far as the back wages for the intervening period are concerned, he has submitted that he is leaving this aspect at the discretion of this Court.

I have heard the learned advocates for the parties. I have also perused the entire award passed by the labour court. There are clear findings in para 7 of the award that the workman was examined vide Exh. 18. In his cross examination, he has admitted that he was working as badli driver and was remaining on the wait list and his service was terminated because of the monsoon season. The labour court has considered one aspect that after completion of the monsoon season, the petitioner had invited the respondent workman for work but because of his sickness, he could not report for duty and, therefore, the petitioner has deleted his name from the list without informing the respondent and also without giving him any opportunity of hearing. The labour court was of the opinion that such an action on the part of the petitioner corporation was violative of the principles of natural justice and, therefore, the labour court has directed the petitioner to reinstate the respondent workman. However, the labour court has no considered one aspect that the respondent workman was working on the wait list and in view of deletion of his name from the wait list, he is entitled to reinsertion of his name on the wait list and not the reinstatement in service keeping in view his placement in the wait list. Similarly, I am of the view that since the service of the respondent was terminated during the monsoon season and onthat occasion, the respondent had not completed 240 days' service, the labour court should not have granted back wages but should have directed to reinsert his name in the wait list as per his original placement so that his seniority may not be affected amongst the persons in the said wait list. Therefore, I am of the opinion that the labour court has committed gross error while granting

reinstatement of the respondent workman with monatory benefits. Therefore, the impugned award is required to be modified to that extent. Therefore, I pass the following order.

This petition is partly allowed. The petitioner corporation is directed to reinsert the name of the respondent workman on the wait list as per his original seniority and placement in the said wait list as a badli driver and the directions of the labour court qua back wages are set aside. The award of the labour court shall stand modified to the above extent. Rule is made absolute accordingly with no order as to costs.

Since the award of the labour court is modified to the above extent, the petitioner corporation is directed to immediately implement the award of the labour court as modified above within one month from the date of receipt certified copy of this order. The petitioner corporation is further directed to pay to the respondent workman the wages from the date of the impugned award till the date of reinsertion of his name in the wait list of badli drivers within two months from the date of receipt of certified copy of this order.

22.3.2000. (H.K.Rathod,J.)
Vyas